

Respondent.

No. 13-0484 RS

Pursuant to 1 CSR 15-3.446(6), we may decide this case without a hearing if the Director establishes facts that Brewer does not dispute and that entitle the Director to a favorable decision. Facts may be established through admissible evidence. 1 CSR 15-3.446(6)(B). Brewer does not dispute the evidence the Director submitted in support of his motion, which includes the

Director's authenticated records. Therefore, we make our findings of fact from the undisputed evidence submitted by the Director in support of his motion.

Findings of Fact

1. On June 18, 2012, Brewer purchased a 2007 Chevrolet motor vehicle for \$21,400.
2. On February 15, 2013, Brewer sold a 2000 Chevrolet motor vehicle for \$3,000.
3. February 15, 2013, was 242 days after June 18, 2012.
4. On March 4, 2013, the Director received a Form 426: Motor Vehicle Refund Request Application from Brewer seeking a refund of state and local sales tax paid in the amount of \$231.75.
5. On March 8, 2013, the Director issued a final decision denying Brewer's claim for a refund.

Conclusions of Law

We have jurisdiction to hear Brewer's petition. Section 621.050.1, RSMo 2000. Brewer has the burden to prove that the law entitles her to a refund. Section 621.050.2, RSMo 2000.

Section 144.025.1, RSMo Cum. Supp. 2012, provides:

[W]here any article on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax is taken in trade as a credit or part payment on the purchase price of the article being sold, the [sales] tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged, if there is a bill of sale or other record showing the actual allowance made for the article traded in or exchanged This section shall also apply to motor vehicles . . . sold by the owner . . . if the seller **purchases or contracts to purchase a subsequent motor vehicle . . . within one hundred eighty days before or after the date of the sale of the original article[.]**

(Emphasis added). A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute. *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796

S.W.2d 883, 885 (Mo. banc 1990). “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.” *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

Section 144.025.1 allows for a refund of sales tax only if the purchase of the subsequent motor vehicle occurs within 180 days of the sale of the first motor vehicle. Here, Brewer’s purchase of the 2007 Chevrolet occurred 242 days after the sale of her first motor vehicle, the 2000 Chevrolet. Therefore, Brewer’s transaction does not meet the conditions required by § 144.025.1, and she is not entitled to a refund of sales tax.

Summary

Brewer is not entitled to a refund of sales tax paid on her 2007 Chevrolet.

SO ORDERED on June 25, 2013.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner